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The unlawfulness of the marriage of brother...

London

1870

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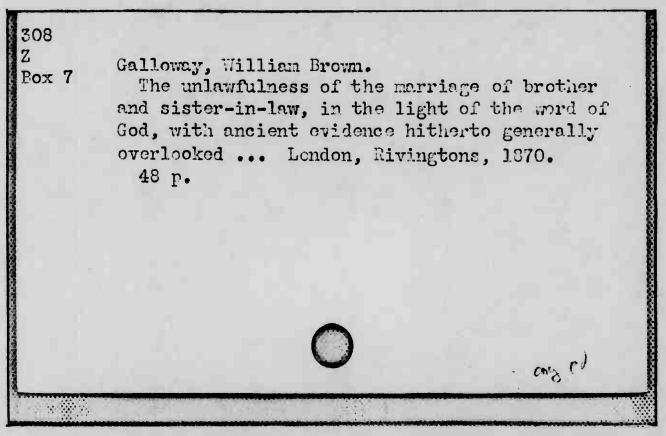
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THE UNLAWFULNESS OF THE

MARRIAGE OF BROTHER AND SISTER-IN-LAW,

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Box 7

IN THE LIGHT OF THE WORD OF GOD;

With Ancient Evidence hitherto generally overlooked.

By W. B. GALLOWAY, M.A.

VICAR OF ST. MARK'S, REGENT'S PARK,
AND CHAPLAIN TO THE RIGHT HON. LORD VISCOUNT HAWARDEN.

London,
RIVINGTONS, WATERLOO PLACE;
HIGH STREET, Oxford. | TRINITY STREET, Cambridge.
1870.

Price One Shilling.

THE UNLAWFULNESS OF THE

MARRIAGE OF BROTHER AND SISTER-IN-LAW.

ALTHOUGH much has been spoken and written on the subject of marriage with a deceased wife's sister, and it was supposed that further agitation of the public mind upon that question might have been spared, yet, as it has been renewed with much appearance of a determination to press for an alteration of the law, it becomes necessary to review again the moral and religious grounds on which it rests. In the controversial treatment of the question, amid the eagerness of mind on the one side and the other, for the attack or the defence of a great moral principle of our social and domestic life, it is not to be wondered at if the disputants in some points have failed to seize, or to discern with sufficient accuracy, the exact bearings of the Scriptural or other evidence; and thus the argument has to some extent got upon a false footing. It shall be endeavoured in the following pages to point out where and how this has occurred, in the hope that the removal of some generally-received fallacies will

be found to strengthen the defence of truth and virtue.

It has been generally assumed that the prohibition in Leviticus, chapter xviii. ver. 18, which in the English Authorized Version is read, "Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other in her life *time*," refers specially to this controverted relation: and while at one time it was quoted as pointing towards the disallowing of marriage with a deceased wife's sister, it is now very commonly laid hold of by those who advocate the removal of the restriction; and they refer to the circumstance that the expressing of a prohibition of it during the wife's *life time*, is, in their opinion, a clear permission, perhaps it might be said even a strong suggestive recommendation of it, after her death; just as an instruction given not to eat the pear before it was ripe, would certainly be construed as suggesting to the patient expectant the eating of it then. The eager and triumphant air with which they put forward the limitation of the express prohibition as decisive, justifies the use of the analogy; but when the case is examined more carefully, it may be doubtful whether even they will not recoil from it.

It is well known that the phrase here literally translated "a wife to her sister," is idiomatic, and that in every other instance of its use it means simply "one with the other," or "one to the other[1]." Thus the curtains of the sanctuary were commanded to be looped and fastened "one to the other,"—literally, as here, "a wife to her sister." When a phrase is thus known, by abundant proof,

[1] Exod. xxvi. 3. 5.

to have been understood idiomatically and in one uniform sense, it is a straining of language to take it, in this one solitary place, in a forced literal meaning, or in any other way than as the usual idiom. If it had been meant to specify the assumed relationship, the expression would more naturally have been, "Thou shalt not take *the sister of thy wife*." But, as it stands, the expression is forced and unnatural, if read otherwise than in its common idiomatic sense[2]. The marginal rendering in our Authorized Version, "one wife to another," comes nearer to its idiomatic force, but not fully up to it. Our learned translators, though dissatisfied with the rendering in the text, contented themselves with suggesting a nearer one, without at once displacing the generally received. Many have erroneously supposed that, if taken in its proper idiomatic force here, it would amount to a prohibition of polygamy; which it could not be intended to convey, since polygamy is known to have been permitted under the Mosaic law. In any case, it would not necessarily forbid such polygamy as Abraham's in taking Hagar, by the consent and at the request of his wife, not in rivalry with her; of which nature also was Jacob's, in taking the handmaids of Rachel and Leah; though it might forbid it under other circum-

[2] Neither in Hebrew nor Greek, nor yet in Latin, any more than in English, is the expression that which would be used to signify "Thou shalt not take the sister of thy wife." Jerome felt that it was not Latin, as it stood in the Old Version, "Uxorem super sororem ejus non accipies in zelum," and erroneously *altered* it to "sororem uxoris tuæ in pellicatum illius non accipies." The old Latin was simply a literal rendering of the Greek, γυναῖκα ἐπ' ἀδελφῇ αὐτῆς, which is merely a literal transcript of the *Hebrew idiom*, with the same meaning, and is not equivalent in Greek to τὴν ἀδελφὴν τῆς γυναικός σου, "the sister of thy wife."

stances, in consonance with Deut. xvii. 17; Exod. xxi. 10. But the true reference is definite to persons previously specified; the idiom of the language requiring this, as Professor Robinson and Dr. McCaul have both remarked, and yet not seen its bearing here[3]; and the meaning will be sufficiently obvious to any who will take the trouble to read two verses consecutively, instead of detaching this verse from that

[3] "When the words, 'a woman to her sister,' or in the masculine form, 'a man to his brother,' are used idiomatically to signify 'one to another,' they have always a plural antecedent of the things or persons spoken of."—Dr. McCaul.

"The phrase, 'a woman to her sister,' does indeed occur no less than eight times elsewhere in the Hebrew Bible in the general meaning, 'one to another,' but only of inanimate objects in the feminine gender; viz. of the curtains, loops, and tenons of the tabernacle, Exod. xxvi. 3 bis, 5, 6. 17; and of the wings of the living creatures, Ezek. i. 9. 23; iii. 13. The like phrase 'a man to his brother,' occurs in all about twenty times; mostly of men, but also in a few instances of inanimate objects or insects, as Exod. xxv. 20. Joel ii. 8. But it is to be remarked that in every such instance, this phrase, whether masculine or feminine, has a reciprocal distributive power; that is, a number of persons or things are said to do or to be so, *one to another*. A plural nominative invariably precedes, connected with a plural verb; and then the action or relation of this verb is by this phrase marked as reciprocal and mutual among the individuals comprised in the plural nominative."—Prof. Robinson.

The Professor is slightly and unintentionally inaccurate here, since the reciprocity may certainly refer to persons or things mentioned in the *objective*, governed by a verb in the singular ('thou shalt not take'), as he himself confesses by an illustration which he expressly gives in the same place. There is no plural verb in Exod. xxvi. 15—17, nor is it necessarily even implied elliptically, but the construction is *objective*. Dr. McCaul elsewhere confesses that the words here "require a *singular* noun going before."—Letter to Vice-Chancellor Wood, p. 52.

Both requirements are substantially answered in the rendering which is the true and natural one, as will immediately be found.

which immediately precedes it, and to which it bears direct reference.

Ver. 17, 18. "Thou shalt not uncover the nakedness of a woman and her daughter, neither shalt thou take her son's daughter, or her daughter's daughter, to uncover her nakedness; for they are her near kinswomen: it is wickedness: and[4] one with the other thou shalt not take, to rival, to uncover her nakedness besides her as long as she liveth."

The last clause may, and probably does, mean an extension of the prohibition, not for a time contingent on the life of another, but for the whole of her own life[5]. But assume it for the present in the sense they wish. If a man had taken for his wife a woman who had a young and beautiful daughter, then, though the daughter was not his relation by blood, it was not permitted him, even if he were brute enough himself, by and by to replace the faded charms of the mother by the fresh and youthful bloom of her daughter; no, nor in his advancing years, when the daughter too had married, and had a daughter grown to maturity, was he at liberty to indulge his old age with the attractions of that younger scion. One with the other he might not take into rivalry, to uncover her nakedness besides her, as long as she lived. They were, indeed, no blood relations of his; but it was enough that they were near blood relations of hers,—"HER NEAR KINSWOMEN." The reason here assigned involves a principle sufficiently comprehen-

[4] The conjunction in the original is copulative, not disjunctive, being not placed in connexion with the negative particle, but in the order here indicated.

[5] Compare the expression, 1 Sam. i. 11.

sive to apply to some other degrees, such as her sister; but it is here specially applied to the wife's mother, daughter, or granddaughter.

And will it now be said, as triumphantly as before, that the expression "as long as she liveth" implies that he was at full liberty to take the daughter after the mother's death? No: their argument here involves more than they would find convenient to advocate. Yet it holds here, if at all. But the words must be taken in one or other of two ways. Either the expression "as long as she liveth" extends the prohibition, as before suggested, to the whole of her own life, in contradistinction from any limitation of time depending on the life of her rival, and means strictly that he shall *never* take her; in which case the relation of "rivals" must be understood in a wide Jewish conventional or legal use, as extending to all who held, or had held, the parallel condition of wives of the same man, even though not at the same time; a relationship still subsisting, in its consequences affecting the near kindred, even after the married union had ceased, whether by divorce or death. Or, if not taken thus, then the limitation "in her life time" might be introduced on account of the extreme *penalty* annexed to the crime; for if a man married a woman and her daughter, they were all three to be burned [6]. Possibly if the daughter was taken only after the mother's death, that extreme penalty might not be required to be put in force; I am not prepared to say that it would not; but if so, would this limitation prove that after her death the act has the sanction of God in Scripture? The argument would be as monstrous as the crime is

[6] Levit. xx. 14.

abhorred. On the contrary, we must assume that the aim was in the direction of strict holiness, and that the limitation of the punishment did not imply justification of the act. Law is to be distinguished from precept in this respect, that law does not prescribe or forbid where it does not undertake to *enforce* obedience. All things are not to be concluded as sanctioned or approved by law, which are only not expressly forbidden by it. We know that in some cases the Jewish legislator was practically hindered from bringing his civil enactments up to the strict line of holiness, by the low state of morals to which the people had previously become accustomed in Canaan and Egypt, and from which they were but just emerging; and that some things were permitted under their civil law "because of the hardness of their hearts." Of this nature was the liberty of arbitrary divorce, which the legislator only partially restricted by requiring the execution of a written document. And to the same purpose may be cited the custom of the avenger of blood, which he restricted by instituting cities of refuge, and by various regulations; the aim being to reduce the evil to the *minimum* then attainable.

The simple and natural construction of the passage as given above, will commend itself to those who can refer to the original. It suggests no difficulty, except how it could have happened that it should be so long overlooked, or that this interpretation should not have been given before: to which it may be answered that it *had* been given in ancient times, but that it was afterwards lost sight of; first, from the desire of some interpreters to be scrupulously literal to the

words, rather than faithful to the meaning and to the idiom of the language; and next, from the use made of the passage by more modern controversialists. That it had been so construed in ancient times is manifest from the following remarkable passage from Philo Judaeus, although in the same passage there is also evidence of the tendency to combine the strained literal rendering of the words; for it was a practice of the Alexandrian interpreters of Scripture thus to combine the modes of construing a passage, giving sometimes both of two incompatible renderings, instead of either selecting the one, or putting the other only as an alternative. The Jewish philosopher and moralist above named writes to the following effect: "For the intermarriages of strangers produce new relationships not short of those which are by blood[7]: for which reason he hath also debarred many other connexions, enjoining a man not to contract marriage with a granddaughter-in-law, the wife[8] of a daughter's son, or of a son's son; nor with a wife's aunt, whether on her father's or on her mother's side; nor with one who had been the wife of an uncle, or of a son, or of a brother[9]: *nor again to wed with a step-daughter, whether widow or virgin, in addition to his wife if she be living, but*

[7] Αἵ τε γὰρ τῶν ὀθνείων ἐπιγαμίαι καινὰς ἀπεργάζονται συγγενείας τῶν ἀπ' αἵματος οὐκ ἀποδεούσας, &c.—Philo, De Specialibus Legibus quæ referuntur ad duo Decalogi capita, sextum septimumque. Opp. ed. Mangey, vol. ii. p. 303.

[8] Here, of course (as in innumerable other similar cases), "wife" must mean "widow" or something equivalent, for it must be after the cessation of the marriage relation by death or divorce.

[9] It will be observed that this statement as to the brother's wife or widow is made without the slightest allusion to any supposed exception.

not even after her death[1]. For the step-father, being virtually father, ought to put the daughter of his wife in the position of his own daughter. Again: he does not permit the same man to marry two sisters, either at the same or at different times. For while she who cohabited with him still lives, even if divorced, whether she continue single, as in widowhood, or even have been married to another, he deemed it unholy for the sister to come into the lot of her who had been unfortunate; teaching these not to dissolve the obligations of kindred, nor to come in upon the disasters of her who was thus united in race, nor to glory and luxuriate in receiving court from those who are at enmity with her, and in paying them court in return."

This passage contains, in the words which are put in italics, an indication that the seventeenth and eighteenth verses of the eighteenth chapter of Leviticus had been read in connexion, and construed in the manner which has been presented above as the only true idiomatic rendering. There is no other part of Scripture, and no other mode of reading this, which could have originated or even suggested these words. The latter part of the above passage from Philo seems to take also, in combination with this, the literal and *un*-idiomatic construction of the eighteenth verse, which has been followed in modern times; and that, apart from the other, was all that the late Dr. McCaul was permitted by his controversial bias to observe in Philo's statement. There may have seemed to be some partial justification of admitting that view as an

[1] Μηδ' αὖ προγόνην, ἢ χήραν ἢ παρθένον, ζώσης μὲν τῆς γυναικὸς ἐπάγεσθαι, ἀλλὰ μηδ' ἀποθανούσης.

extended application of the passage in Leviticus, in combination with the primary meaning, in consequence of the general reason assigned in the seventeenth verse for the prohibition there contained, "*They are her near kindred*," for that gives a *principle* which could scarcely fail to include her own sister[2]. Thus the case of the wife's sister is there by implication, though not named. But to what extent the principle was held to forbid her marriage with her sister's husband, might in practice among the Jews be partially affected by the very unequal footing of the two sexes in that imperfect dispensation. The law of Leviticus viewed the case principally from the male side; and though the moral relation of two sisters successively to one and the same man as husband is strictly parallel to that of two brothers in succession to one and the same woman as wife, yet, in order to discern this, the case must be looked at from the female side, as well as from the male. The tendency of the law of Moses was to elevate the position of woman above that into which it had previously fallen, and to bring it up *towards* equality of moral rights; but this it imperfectly accomplished. While slavery and polygamy lasted, the moral rights, and consequently the moral responsibilities of woman, could not be equal. But Christianity has made them equal. In Christ there is neither bond nor free, neither male nor female.

[2] The manner in which the passage is used and applied by Maimonides and Rabbi Ob. De Bartenora as including *several* forbidden degrees of consanguinity to the wife under the expression of "a wife to her sister," or "one with another," confirms the view of the passage here given, and will be found afterwards remarked on in a note when we come to speak of the Mishna.

The obligations of holiness are equal, and the propinquity which excludes two brothers from marrying in succession the same woman, must equally exclude two sisters from marrying in succession the same man.

Now from the male side the relation of two brothers born of the same parents was unquestionably declared so near, as to forbid their successively marrying the same woman, as we read in Levit. xviii. 16. Here again, however, there exists, in some particulars, much popular misapprehension of facts regarding the Jewish law. The case of the seven brethren, which the Sadducees put to our blessed Lord, has been assumed to show that it was permitted, nay prescribed in certain cases, for a man to marry the widow of his own full brother, born of the same parents; and, as if this position were incontestably true, instead of undoubtedly mistaken, a respected minister, lately exalted to be a dignitary of the church, is quoted as arguing that *because* it was lawful, and in certain cases prescribed, that a brother should take his brother's wife, therefore it must be lawful in the sight of God for a man to take his deceased wife's sister, if only the law of man were altered to permit it. It is superfluous to point out, as regards that clergyman, that this was certainly on his part to hold and teach contrary to the doctrine and discipline of the Church of England, which regards such a marriage as incestuous; and that the necessary certificate for a clergyman could not have subsequently been given with any colour of truth, to the effect that he had not held or taught contrary to the doctrine or discipline of the Church, unless he had renounced

that error. We may reasonably assume therefore that the dignitary in question must long previously have abandoned his erroneous opinion, though it is still quoted. It is well known that in many cases the clergy were entrapped into the rash expression of premature opinions by plausible canvassers for petitions to parliament for the alteration of the law, and that the names thus affixed without due consideration became also the means of decoying others. It is also known that some, who were thus drawn in, afterwards declared themselves to the contrary, and joined the "Marriage Law Defence Association." But we are dealing here with arguments and statements, not with persons; and it therefore will suffice to show that the case put by the Sadducees was not such as has been thus supposed; that the Mosaic law on which it was founded implies no such thing; that under the law there are no instances in which it was so exemplified; and that there is express proof that the marriage of a brother with his own brother's wife or widow was by the law of the Jews incestuous, even where there had been no children; and accordingly, that the own brother was expressly exempted from the claim of his brother's widow.

The Sadducees, in putting to our Lord a supposed difficulty as to the resurrection of the dead, were under no necessity of either inventing a case, or encumbering it with improbable circumstances not bearing on the point at issue. The point of the case, as they themselves put it regarding the woman, was not that the seven were all sons of the same parents, but simply that "*seven had her to wife*," and that under the Levirate law she had an authorized claim to the seven. But that they

should be all *own-brothers* of one another was nowhere specified or thought of in the Levirate law. Nor could it be replied to the Sadducees that their supposed case was their own mere invention: for the case itself was to be found in one of their traditionary tales of the Captivity; namely, in the apocryphal book of Tobit; and the only supposition which they introduced, varying from the case there given, was the terminating of it after the death of the seven, instead of the woman, under the same law, eventually, beyond expectation, marrying an eighth, in the person of Tobias, to whom she bore children. For the purpose of the Sadducees' argument, it was allowable to suppose that she might have died after the seven to whom she bore no children; and the stopping of the case there was necessary to the point of the equal claim of the seven, on which their objection rested. But there is nothing in the traditionary tale founded on to indicate that the seven men were nearer related to one another than they were to the eighth, namely, Tobias; and he, unquestionably, was not the own-brother of any one of them. The case, though lying at the doors, as it were, and such as might be expected to be familiar, is yet unknown to many, and we may therefore cite it as important to our subject. It will be found in the third chapter of Tobit. Sara, the daughter of Raguel, an Israelite, of Ecbatane in Media, as we there read, "was reproached by her father's maids because that she had been married to seven husbands, whom Asmodeus, the evil spirit, had killed before they had lain with her. Dost thou not know, said they, that thou hast strangled thine husbands? Thou hast already

had seven husbands, neither wast thou named after any of them. . . . When she heard these things she was very sorrowful, so that she thought to have strangled herself." Her sorrow, we then read, was poured out in prayer, in which her case is thus stated by herself: "Thou knowest, O Lord, that I am pure from all sin with man, and that I never polluted my name, nor the name of my father, in the land of my captivity; I am the only daughter of my father, neither hath he any child to be his heir, *neither any near kinsman, nor any son of his, alive, to whom I may keep myself for a wife. My seven husbands are already dead; and why should I live?* but if it please thee not that I should die, command some regard to be had of me, and pity taken of me, that I hear no more reproach."

Thus far the case was precisely that put by the Sadducees. The full extent of her Levirate claim was believed to be exhausted; and she would not go and be married to a stranger so as to carry the inheritance with her out of the family, much less out of her people, so polluting her name in the land of her captivity. As far as was known at the time, there lived no kinsman, nor kinsman's son, whom she could claim. It was not one family only of her kindred that was exhausted by the seven already fruitlessly betrothed to her, but *all* the families of *all* her kindred. The seasonable arrival of Tobias, the son of a kinsman long removed from them by distance, and long lost to intercourse or knowledge amid the incidents of the captivity, opened a new chapter in her history; but the purpose of the Sadducees required the case to be assumed as it was, and would have been, without that unexpected

re-opening. Now Tobias, who was entitled to her hand, according to the tale, married her under the claim of the law which gave her to her husband's "brother;" but the relationship here is stated to have been that he was the son of a cousin of her father[3]. Will it be objected that the book of Tobit is a romance? It is unnecessary here to discuss that question, because even if so, it is at least an ancient Israelitish historical romance, of the period following the captivity of the ten tribes, and it is written by one practically conversant with their laws and customs. It furnished thus a sufficient basis for the expression of the Sadducees, "There were with us seven brethren[4]." And what would the objectors oppose to it? A baseless invention of their own, such as the Sadducees never contemplated,—a romance, differing from the other in being false alike to Jewish history, Jewish law, and Jewish tradition, and which we are bound to consign unceremoniously to the limbo of all falsehoods. Under the Mosaic law it was expressly enacted, "Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness[5]." It is a mistake, however prevalent it may be, to suppose that the Levirate law of Deut. xxv. 5, as understood and

[3] Tobit vii. 2; vi. 11, 12. There is another feature of the Jewish law which appears prominent in the tale of Tobit. The law applied in the case where betrothment had taken place, though the persons had not actually cohabited. This of itself might materially affect the present argument, since betrothment often took place at a very early age by the parents of the parties, and the Levirate claim might come into force where the betrothed bridegroom died while yet a minor, and the marriage had never been consummated.

[4] Matt. xxii. 25.

[5] Levit. xviii. 16.

used in Israel, required, in any case, a violation of this precept, or exempted the violator of it from the penalty under the Divine administration, "He shall be childless." The law of Deuteronomy, under which the objection of the Sadducees was framed, is the following :—

"If brethren dwell together, and one of them die, and have no child, THE WIFE OF THE DEAD SHALL NOT MARRY WITHOUT UNTO A STRANGER: HER HUSBAND'S BROTHER [that is, "*brother*" opposed to "*stranger*," and thus equivalent to "*kinsman*," as it is rendered on the margin] SHALL GO IN UNTO HER, AND TAKE HER TO HIM TO WIFE, AND PERFORM THE DUTY OF AN HUSBAND'S BROTHER UNTO HER. And it shall be that the first-born which she beareth shall succeed in the name of his brother which is dead, that his name be not put out of Israel. And if the man like not to take his brother's wife, then let his brother's wife go up to the gate unto the elders, and say, My husband's brother refuseth to raise up unto his brother a name in Israel, he will not perform the duty of my husband's brother. Then the elders of his city shall call him, and speak unto him: and if he stand to it, and say, I like not to take her; then shall his brother's wife come unto him in the presence of the elders, and loose his shoe from off his foot, and spit before him, and shall answer and say, So shall it be done unto that man that will not build up his brother's house. And his name shall be called in Israel, The house of him that hath his shoe loosed."

The ceremony of loosing the shoe from off the foot had reference to the renouncing of the claim of right to the *inheritance* of the deceased, and the person of his widow, and transferring it for some other to step

into, as we learn from the book of Ruth, ch. iv. 7. "Now this was the manner in former time in Israel concerning *redeeming* and concerning *changing*" (or transferring property), "for to confirm all things; a man plucked off his shoe, and gave it to his neighbour: and this was a testimony in Israel." In the tale of Tobit we find, very markedly, the reference of the law to *inheritance*. In the history of Ruth the use of the ceremony also distinctly bore this reference to the *inheritance* of the deceased. "The kinsman said unto Boaz, Buy it for thee. So he drew off his shoe. And Boaz said unto the elders and unto all the people, Ye are witnesses this day, that I have bought all that was Elimelech's, and all that was Chilion's and Mahlon's, of the hand of Naomi. Moreover, Ruth the Moabitess, the wife of Mahlon, have I purchased to be my wife, to raise up the name of the dead upon his inheritance." This custom of pulling off the shoe gave the name of CHALITZAH to the law and custom observed in the case of a man's rejecting the childless widow's claim of him as next kinsman. The claim of the widow, in the case specified, to the next kinsman of her deceased husband, may be traced to the custom of ages long preceding the Mosaic legislation; and in the practice of the nations of Canaan and Moab no bar seems to have been interposed on account of any degree of nearness of consanguinity to the deceased. The family of the patriarch Judah, and in some degree that patriarch himself, though not equally with Reuben, became infected with the moral atmosphere of Canaan. Two of his sons were early cut off for their gross moral corruption. His daughter-in-law, on the death of her husband, laid claim to his next brother, then to the

next, and, failing him, eventually to her father-in-law as nearest kinsman of the deceased, which she accomplished by a deliberate stratagem, marking at once the absence of every scruple from her own Canaanite mind, and the shamefully relaxed morals of Judah. But the remaining conduct of Judah showed that he regarded such a union as distinctly unlawful in his own case, and he had previously become doubtful of it in the case of his son, the brother of the deceased. In like manner the Moabite daughters-in-law of Naomi, by the custom of their country, would have understood that they were entitled to claim without reproach the other sons of their mother-in-law, if others there had been, to take the place of their deceased husbands; though in the sequel of the same history we shall find that in Israel the point was regarded otherwise. The law had, no doubt, some remote origin in the early patriarchal times; but the moral limitations under which it had then existed had been gradually relaxed in the customs of the corrupt nations, among whom no barrier of kindred or consanguinity was at all regarded. Not only Scripture[6], but the heathen writers testify to this utter dissolution of manners having prevailed among them[7]. The law of Moses reintroduced the holy limitations of domestic virtue, but it did so with a certain adaptation to the con-

[6] Levit. xviii. 24, 25. 28; xx. 23.

[7] Euripides makes Hermione reproach the Asiatics with it:—

> τοιοῦτον πᾶν τὸ βάρβαρον γένος·
> πατήρ τε θυγατρὶ παῖς τε μητρὶ μίγνυται
> κόρη τ' ἀδελφῷ."—Eurip. Androm. 173.

Xanthus, quoted by Clement of Alexandria, affirms these practices to have been authorized by the opinions and example of the Persian Magi.—Clem. Alex. Strom. iii. Opp. p. 431, A.

stitution of society existing at the time. The laws of inheritance caused the first application to be made to the husband's next of kin; but he not only was exempt from taking her, he *dared not* take her if he was within the prohibited degrees. There is no instance in Scripture history of this law having been interpreted or acted on in Israel in a manner that would involve any violation of the laws of the eighteenth chapter of Leviticus. If the word "brother" in the Levirate law of Deut. xxv. 5 meant specially the own-brother, the son of the same parents, then by what right or colour of right did Ruth lay claim to Boaz? He was not her deceased husband's own brother. He was not even her husband's nearest kinsman. Yet he was claimed as being probably the nearest not within the forbidden degrees. The course of the history of the transaction justifies this opinion. Boaz at once recognized the claim of Ruth, but said, "Howbeit there is a kinsman nearer than I." It was necessary under the Levirate law, on account of the rights of inheritance, that the nearer kinsman should be first applied to, even if it were unlawful for him to take the woman. And when the nearer kinsman was applied to, and asked if he would redeem the inheritance, he declared himself willing to do so; but when apprised that he must take it at the hand of Ruth, that is, by marrying her as the wife of the deceased, he replied, "I CANNOT REDEEM IT FOR MYSELF, LEST I MAR MINE OWN INHERITANCE: redeem thou my right to thyself; for I CANNOT redeem it." And why should he suppose himself to be marring his own inheritance by taking an *addition* to his inheritance at the hand of Ruth, when that addition would certainly pass away from him if he did *not* take it at her hand? If he was within the forbidden

degrees, the reason is intelligible from the denounced penalty, "HE SHALL BE CHILDLESS," which applied not only in the case of taking an own-brother's wife, but also in the case of taking an uncle's[8]; and probably, therefore, might be anticipated in the parallel case of the marriage of a nephew's wife by an uncle; which last, or something analagous, may have been the relation in this instance.

The evidence afforded by the Jewish MISHNA, or body of their traditionary law, is in accordance with what has been said. The twenty-second book of the Mishna is entitled "YEBAMOTH," as treating of the precept of *Yeboom* (that is, the obligation of marrying the widow of a childless deceased brother), and of the ceremony of *Chalitzah*, or the taking off of the shoe of the recusant brother-in-law by the widow, with the cases arising under these according to Deut. xxv. 5—11. Throughout the treatise it is observable, in the first place, that the general names of "sister-in-law" and "brother-in-law" are applied to the parties, in whatever relation of kindred they stand to each other, many degrees of which are treated of; and also, that the general name of "brother" is applied to the kinsman of the deceased husband, in whatever degree related. A careful attention to this is necessary to prevent confusion where the word "brother" is introduced in its stricter sense. It is further to be noticed that the name of "rivals" is applied to the several wives of one man.

In their introduction to this book of the Mishna, in the English translation executed by them, Mr. De Sola and Mr. Raphall (both of them Jews, and following here a prefatory tract of Maimonides their commentator) have remarked that "when circumstances exist which would render such marriage unlawful; as, for instance, if the parties were related to each other within the degree of consanguinity prohibited by the Holy Law to intermarry, the precept of Yeboom is superseded, and even the ceremony of Chalitzah is unnecessary;" and "that when the brother-in-law cannot marry the widow on account of near affinity, he may not marry any of the other wives of his deceased brother, who in the technical term of the Mishna are called rivals[9]."

[8] Levit. xx. 20, 21.

In the first section of the first chapter of this

[9] "Secundum fundamentum est, Si mortuus fuerit alicujus frater et relinquerit uxorem, hæc mulier illicita est fratribus, aut uni ex fratribus qui obligati sunt ad inuendum levirationem aut ad dandum calceum extrahendum, exempli gratiâ, si uxor mortui mariti fuerit filia fratris vivi, aut soror uxoris ejus, hic frater, cui mulier hæc prohibita est propter incestum, non inibit cum ea levirationem, eo quod scriptum est Levit. xviii. 17, 18. Et Deut. xxv. 5 dicit perinde ac si dixisset, Quod tibi dixi *Levir ejus veniet ad eam*, intelligi debet quando soror fuerit uxoris tuæ *Non capies ad afficiendum illam angustiâ;* ET HINC ETIAM PLURES INCESTUS SORORIS UXORIS DOCEMUS." R. M. filius Maimon, ap. Mischna, *edit. Surenhus.* vol. iii. p. 1. The last words here show that Maimonides did not understand the words, "a wife to her sister" as applying distinctively and exclusively to a wife's *sister;* otherwise how should he speak of PLURES INCESTUS, "several forbidden degrees," applying to that one relation? Plainly he takes the *soror uxoris* simply as meaning the "fellow wife," taken "one with the other," referring to the cases prohibited on account of consanguinity to the wife, Levit. xviii. 17. So also Rabbi Ob. De Bartenora takes it not as confined to one case, but in commenting on the rule, *Quindecim mulieres liberant æmulas earum*, he says, "Ut Scriptura dicit Levit. xviii. 18: ubi non erat necesse dicere עליה, "super illam," nisi ad docendum nos, quod etsi leviratio ejus sit ea de qua dicitur Deut. xxv. 5, si fuerit mulier cum sorore, non illam sumet: IDEM INTELLIGENDUM EST DE RELIQUIS CONSANGUINITATIONIBUS sive scortationibus impudicis quæ merentur pœnam excisionis." It is to be observed that the consanguinity spoken of in this passage is, or includes, *consanguinity to the wife*, that is, *affinity to the husband*, such as exists to a deceased wife's sister, mother, or daughter.

book of the Mishna, fifteen classes of women are specified, who, in consequence of being within the forbidden degrees, are released, and release their "rivals," and the "rivals" of these *ad infinitum*, from the obligations of Chalitzah and Yeboom. These are,—1. Where the widow of the deceased is the *daughter* of the "brother" (that is, where the nearest kinsman, called in the terms of this law "*brother*," of the deceased, was her own father). 2. Where she is his *daughter's daughter;* or, 3. his *son's daughter*. 4. Where she is his *step-daughter* (daughter of the so called "brother's" wife). 5 and 6. Where she is his wife's *granddaughter*, whether daughter of her daughter or of her son. 7. Where the widow is *mother-in-law* of the "brother," or nearest kinsman; or, 8 and 9. *The mother of his mother-in-law or of his father-in-law.* 10. Where she is his *own sister;* or 11, his *mother's sister;* or 12, his *wife's sister*. 13. WHERE SHE IS THE WIDOW OF HIS UTERINE BROTHER; or, 14, *of a "brother" who had not been contemporary with him* (that is, who died before the now nearest kinsman was born). 15. Where she is his *daughter-in-law* (that is, where the deceased husband's "brother," so called, or next kinsman, was HIS FATHER).

These cases show that the word "brother," in its general use in this law, is to be taken[1] as co-

[1] The first case given is where the deceased husband's "brother" was the widow's father. A misunderstanding of this may have contributed to the monstrous error of the later Jews, that a man was permitted to marry his brother's daughter. But no such inference can justly be drawn from it; the fact being that, in the other cases put, it appears that the word "brother" means, not strictly "own-brother," but "kinsman." As, for instance, in the tenth, where the widow is the own-sister of her deceased husband's "brother," which she could not be if her deceased husband and he were own-brothers; in the eleventh, where she is supposed to be his mother's sister, which on the same supposition was impossible; and in the fifteenth, where the deceased husband's relative, called "brother" in terms of the law, was his *father*, and her *father-in-law*. Thus these fifteen cases of the "brother" begin with her own father, and end with her husband's father. Every one must perceive that even if the later Jews had not greatly erred in supposing the marriage of uncle and niece to be permitted by the law of God, yet the first case here put could not possibly be restricted to that; for even if the kinsman who otherwise would have married the widow under this law were *not* the husband's own-brother, he still must be forbidden if he was her father. And that he was not there supposed to be her husband's own brother appears expressly in the thirteenth case, where that degree is specially forbidden.

extensive with "kinsman" or "relation;" and in all these fifteen specified cases marriage was forbidden, and even the ceremony of Chalitzah superseded as unnecessary. It will be observed that the case of the "uterine brother," the son of the same mother, is among them; and that the prohibition of marriage in these cases was construed by the Rabbis as extending not only to the widow, but also to her "rivals," that is, to those who had been wives with her of the same man, and even to *their* "rivals." But this last appears to be a traditional addition to the Mosaic law.

In the third section of the same chapter of the Mishna there are specified six degrees of relationship, rigidly prohibited, in which, while the women could not claim, or be married to, the deceased husband's "brother" (so called), it is permitted to the "brother" to marry their "rivals" after the decease of their husbands.

Last of these six prohibited degrees is named the wife of his *brother by the father's side*. Hence it appears that she who had been the wife of a

man's brother by the father's side, was acknowledged to be herself within the degrees of relationship *rigidly prohibited to him*, and could not be married to him by Yeboom on her husband dying childless: but her "rivals" in any other marriage might be married to him after the death of their husband; which even they could not, if her husband had been *uterine* brother [2].

It will be observed that the Mishna is here cited simply as historical evidence, to illustrate the meaning of the Word of God, and not as authoritative in itself. But in regard to this special law it is of great value, because the expulsion of the Jews from their inheritances and country, and their

[2] The ignorance of these facts, and of the whole principle of the Jewish law on this point, which is exhibited in a tract on Levit. xviii., by the late Dr. McCaul, is such as we should not have expected. I sincerely regret to refer to this, but as the tract has, from its respected author and its own pretension, obtained weight with many, it is necessary that its flimsy nature should not be passed over, even in deference to its lamented author. Dr. McCaul refers more than once (p. 34) to the law of Deut. xxv. 1, in terms implying that he interpreted the word "brother" in that place to mean strictly the man's own full brother, born of the same parents, contrary to the Jewish law and the evidence of facts. In a subsequent tract, in reply to a speech of Vice-Chancellor Sir W. Page Wood, now Lord Chancellor Hatherley, he does not correct his error, though he had in the interim glanced at, and partially quotes, for a controversial purpose, a passage of the Mishna, which, if he had read it, would have obliged him in honour and truth to correct himself. But instead of this, he repeats his error (p. 72) with the same perfect unconsciousness! It may less be wondered at that similar ignorance should exist among many of the laity, and among some of the clergy, or even dignitaries of the Church, too much engaged in the routine of their practical duties to have had opportunity duly to examine the matter, and some of whom may have received their status through the influence of persons careful to favour the error.

subjection to the laws of the countries in which they became scattered, in process of time must have brought this law practically in a manner into disuse; and this circumstance confines the evidence mainly to the tradition of the ages preceding their dispersion from Palestine. That tradition it was a main object of the Mishna to preserve. In regard to marriage with a deceased wife's sister its testimony as to principle is not quite conclusive. In repeated instances it contains the prohibition of the marriage of a wife's sister during the life time of the former, where, but for that relationship, the latter might have claimed by Yeboom; thus at least making it clear that THE LAW OF YEBOOM DID NOT OVERRIDE THE LAW OF THE PROHIBITED DEGREES. In the following instance in the seventh section of the third chapter of the book of *Yebamoth* it recognizes an indelible character in the obstacle arising from that prohibition, where it had at one time existed as a hindrance to Yeboom. "When of three 'brothers' (*brothers* in the phraseology of this law, that is, *kinsmen*), two are married to two sisters and one to a stranger: if one of them who married the sisters died, and he who had married the stranger marries the widow, and then the wife of the second 'brother' dies, and also the third 'brother,' *then the widow will be for ever prohibited to the second or surviving 'brother,' because she was for some time prohibited to him [as his wife's sister]*." And again in the ninth section: "When of two 'brothers' (*kinsmen*, called brothers within the meaning of this law [3]) married

[3] The use of the word "brothers" in regard to this law may be illustrated from the Mishna by a passage in the seventh section of the fourth chapter of the treatise *Yebamoth*: "When a person

to two sisters, one dies, *and afterwards the wife of the surviving brother also dies*, then he may never marry his 'brother's' widow; because there *was* a time when she was prohibited to him" [namely during the life of his wife her sister]. "Haec est prohibita semper; quia illi prohibita erat unam horam." But this principle, which if consistently followed out would in all cases have forbidden marriage with a deceased wife's sister (and it is indeed so forbidden by the Karaite Jews, in conformity with the probable custom of earlier and better times), was, in the times of the compilation of the Mishna, not practically acted on to that extent; and the consequences showed themselves in the awakening of illicit desires towards the sister, in the life time of the wife; as we find from the following legal maxim of the Mishna (*Yebamoth*, c. xvi. § 10): "A man

has received CHALITZAH from his sister-in-law, he may not marry her *near relations*, nor she his" [Rabbi Ob. De Bartenora explains that this is on the same principle as if she had become his wife]. "He may not marry her mother, nor her grandmother (whether her mother's or her father's mother), her daughter, or granddaughter (whether by son or daughter), or her sister while she is alive. HIS BROTHERS MAY MARRY HER; *but she may not marry his father, nor his grandfather, whether his father's or mother's father, his son, his son's son,* HIS BROTHER, OR HIS BROTHER'S SON." Here, under the general term "HIS BROTHERS," are included all his other kinsmen, as well as his *father*, his two *grandfathers*, his *son*, *son's son*, his *brother*, and his *brother's son*, for these special relations are expressly *excepted*, and are those before referred to in the same section as the *propinqui*, *near relations*, or *near of kin*. The reader may verify these things for himself by reference to "Eighteen Treatises from the Mishna," translated into English by the Rev. D. A. De Sola and the Rev. M. J. Raphall, 8vo. London, 1845, published by Sherwood, Gilbert, and Piper. Or, if he wish to refer to the original, with the Latin translation, he will find the passages in the third volume of the edition of the Mishna by Surenhusius, published at Amsterdam, in six vols. folio, 1798.

is not to be believed on his own assertion, when he says, 'My wife died,' as it is possible he may wish to marry her sister." This singular maxim reminds us of other dangers. The life of the wife in time of sickness may be much in the hand of her attendant sister; and it were undesirable that she should be in the hand of a rival and destined successor, having an intense and impassioned interest in her death. In the case of the slow poisoning of a lady by arsenic some years ago, for which the husband was tried and acquitted, it came out on the evidence that the moment the lady breathed her last, her sister, who had been in attendance and was at the bedside, threw her arms about the neck of the bereaved widower. The act, however innocent, is disagreeably suggestive. There were advertisements at that time of the countries in which such marriages might be lawfully celebrated, which misled not a few.

The practice of polygamy and the permission of divorce complicated the relationships of social life, and have rendered the regulations contained in this treatise of *Yebamoth* very numerous and intricate. The effect of the law as regards "rivals," was to increase greatly the number of those who were within the forbidden degrees, and thus to put a check on polygamy by its own operation in that reactionary manner; because so many of the women with whom a man was brought into friendly relations were thus forbidden to him; for let any one reflect how many women were prohibited to a near kinsman of such a man as Solomon; but the instances which have been quoted are sufficient to show that the construction which we have put on

the Mosaic law of Deut. xxv. 5—11 is justified by the Mishna, and was fully and universally accepted by the Jews at the date of its compilation, however that construction may have been lost sight of at a later period when long desuetude had made its very principles forgotten. As in interpreting any of our own laws we do not take the general enunciation to be irrespective of the "provided always," by which it is qualified and restricted; so, in interpreting the Mosaic law, we ought not to take the law authorizing the claim of the childless widow upon her husband's "brother," that is, *kinsman*, as irrespective of the express exception of the forbidden degrees, or meant to be observed in violation of them.

Let the reader consider what monstrous consequences would be involved if this principle were set aside. We may take as a specimen two cases, not imaginary, but which are put by the Rabbis and are to be found in the same treatise of the Mishna. 1. Two "brothers" marry a woman and her daughter, and the husband of the latter dies without children: is the surviving brother required to take to wife his brother's widow in this case, being the daughter of his own wife? 2. Two "brothers" marry two full sisters, and one of the "brothers" dies without issue: is the widow of the deceased entitled to claim her husband's "brother," and thus to become the "rival" of her living sister? No: in both cases the law of forbidden degrees comes in. But if in these cases, then in all others, and specially in the case of a full brother's widow, as the Mishna accordingly bears witness.

If there were any remaining doubt upon the

question of marriage with a deceased brother's widow, it would be removed by the historical testimony of Josephus, and the witness of John the Baptist borne with his own blood. It is an ever memorable fact that the latter sacrificed his life to his faithfulness in bearing witness to Herod that it was not lawful for him to have his brother Philip's wife. Divorce had passed between Philip and Herodias[4], and marriage had taken place between her and Herod[5]. The remonstrance of John the Baptist was not founded on the imputation of adultery. If a brother's wife had been no otherwise forbidden than as any other man's wife, it could scarcely have been maintained, as a general proposition, that after divorce it was, according to the Mosaic law, unlawful for Herod to marry her. The testimony for which John suffered martyrdom was not that he was living in adultery, but that the marriage was incestuous; "It is not lawful for thee to have thy *brother's* wife." Is, then, the testimony of the blood of the martyred John the Baptist, the chosen forerunner of our blessed Lord, to be summarily set aside by men professing the name and faith of Christians? Will a minister of Christ continue to permit his name to be cited as sanctioning the proposition that marriage with a deceased brother's wife was lawful, and even commanded in a certain case, and that *therefore* marriage with a deceased wife's sister should be permitted, and that not merely in the case where there are no children, but in *all* cases?

But if the circumstance that Philip, from whom Herodias was divorced, was still alive, should be

[4] Josephus. [5] Mark xvi. 17.

thought to diminish the weight of the argument derived from the unqualified declaration of John to Herod, "It is not lawful for thee to have thy brother's wife," in which he so plainly denounces the union as incestuous, the testimony of the Jewish historian, Josephus, here comes in to the same effect in a very striking manner, by another instance in which the brother was deceased. The case now referred to is that of Archelaus and Glaphyra, and is thus stated by the historian (Antiq., book xvii. ch. xiii.): "Moreover he" [Archelaus son of Herod the Great] "transgressed the law of our fathers, and married Glaphyra, the daughter of Archelaus" [King of Cappadocia], "who had been the wife of his brother Alexander, which Alexander had three children by her; WHILE IT WAS A THING DETESTABLE AMONG THE JEWS TO MARRY THE BROTHER'S WIFE." Alexander had been put to death by his father some time before. The case is more fully related by the same historian in his Jewish War (book ii. ch. vii.), where the strong testimony of conscience in Glaphyra herself is presented in a remarkable dream of hers, and in her death: "I cannot but think it worthy to be recorded what dream Glaphyra, the daughter of Archelaus, King of Cappadocia, had, who had at first been wife to Alexander, who was brother of Archelaus, concerning whom we have been discoursing. This Alexander was the son of Herod the king, by whom he was put to death, as we have already related. This Glaphyra was married, after his death, to Juba, King of Libya, and after his death was returned home, and lived a widow with her father. Then it was that Archelaus the ethnarch saw her, and fell so deeply in love with her, that he

divorced Marianne who was then his wife, and married her. When therefore she was come into Judea, and had been there for a little while, she thought she saw Alexander stand by her, and that he said to her, 'Thy marriage with the King of Libya might have been sufficient for thee; but thou wast not contented with him, but hast returned again to my family, to a third husband, and him, thou impudent woman, hast thou chosen for thine husband who is my brother. However, I shall not overlook the injury thou hast offered me; I shall soon have thee again, whether thou wilt or no.' Now Glaphyra hardly survived the narration of this dream of hers two days."

The case is so much the stronger in these two instances in the Herodian family, because Philip and Herod Antipas, though both of them sons of Herod the Great, were not full brothers, being by different mothers; and because Alexander and Archelaus also were not of the same mother, though sons of the same father. It is plain, then, that it was not lawful for brothers, whether the sons of the same father or of the same mother, even though not of the same parents on both sides, to marry the same woman in succession, either during life, or after the death of one of them. And we have seen accordingly that the Mishna expressly treats this relationship as a forbidden degree, debarring marriage by Yeboom, both in the case of the wife of a deceased uterine brother and of a brother on the father's side. Philo also, in a passage above quoted, puts it unqualifiedly among the forbidden degrees.

The incestuous tendencies of the Herodian family were illustrated not in the violation of one forbidden

degree only. When once the holy barriers have been broken through, other restraints of the same nature are less regarded, and the progress of demoralization keeps pace with the wider range given to the thoughts and desires of the heart. Where or how the licence of guilt first began we know not, but the fact appears that Herodias was the niece, half-blood, both of Philip her first husband, from whom she obtained divorce, and of Herod Antipas her second husband; for she was the daughter of Aristobulus, son of Herod the Great by Mariamne, and brother of Alexander. The evil and danger were not confined to that age. That the same, if not a fuller, blood-relationship was disregarded, in his second marriage, by a continental prince, who, by a son of his former marriage, became nearly connected with England, has been impartially pointed out by our most gracious Queen, in a note under her own hand[6], which may serve as a faithful warning to her subjects, especially to those who now are pressing for a partial opening of the floodgates. It is instructive also that John the Baptist does not fix upon this blood-relationship as the ground of his censure of Herod, but upon the fact of Herodias having been his brother Philip's wife. The former degree was forbidden by implication and analogy of principle[7],

[6] "The new duchess was his own niece."—"Early Years of the Prince Consort," note, p. 88.

[7] Concerning "thy son's daughter" and "thy daughter's daughter," it is written, "Theirs is *thine own* nakedness." This *principle* plainly includes the "daughter" herself, though not named, in the same prohibition. And by parity of reason, it must hold respecting *thy brother's* daughters, that theirs is "*thy brother's* nakedness," which is forbidden to thee; Levit. xviii. 10. 16. Moreover, a nephew is forbidden to marry his aunt (Levit. xviii. 14); but uncle and niece are related in the same degree as aunt and nephew, and therefore must be held forbidden.

The later Jews fell into error in supposing that because the consanguinity of an uncle and his "brother's daughter" or "sister's daughter" is not *named* by Moses, it is therefore permitted in marriage; and Maimonides indorses the opinion. Here the source of their error is their failing to discern the principle and spirit, further than is laid down in the *letter* of the prohibitions. Holy Scripture furnishes no instance, of such a marriage if we except the Herodian family. But on the other hand, Maimonides recognizes unqualifiedly the prohibition of marriage with a brother's wife, and with a wife's sister; and the reason which he assigns is one not based on rivalry or vexation, but on propinquity.—Maimonides' "Reasons of the Laws of Moses," Townsend's Translation, p. 318.

but the latter expressly. The circumstance illustrates the remark of Philo, which has been quoted above, that "the intermarriages of strangers give rise to new relationships not inferior to those of blood."

It has been necessary to present these facts in considerable detail because of the false light in which prevalent misapprehensions of them have led many to regard the subject. They give us the following definite results.

1. The general principle is expressly laid down, that THE NEAR KINDRED OF A MAN'S WIFE ARE FORBIDDEN TO HIM; and it is *because* of this principle that his wife's daughter and granddaughter are forbidden to him, the penalty of his taking one or other of whom along with his wife was that both he and they should be burned.

2. The SISTER of his wife is beyond all doubt one of HER NEAR KIN, in the sense in which that expression is used in relation to the law of kindred; just as much as a man's brother is beyond all question

one of *his* near kin, or his mother's sister "his *mother's* near kinswoman [8]."

3. There is nothing in Scripture to limit the prohibition of marrying a wife's sister to the period of the wife's life time, any more than to limit the prohibition of marrying the wife's daughter or granddaughter; the limitation, if it be one at all, being introduced in reference to *them*, and not to the sister. But viewed, as it must be, in reference to them, it is to be regarded more probably, not as a limitation, but an extension of the prohibition to the whole of life, as opposed to the mere continuance of the nuptial bond, which might have been terminated even by divorce. There is nothing sufficiently to prove that it was the *wife's* life which was the measure given. The expression ("as long as she liveth") may refer to the daughter. But if it be taken as a limitation, it is to be regarded with reference to the dreadful nature of the *penalty*, and not as a licence of the crime, the abhorred atrocity of which would no doubt be much aggravated by being perpetrated during the life of the wife her mother, but which would retain its incestuous character though she were dead. The ancient construction put on the law, in the passage quoted from Philo, takes this view.

4. A brother's wife is expressly named as within the forbidden degrees of relationship, and this was meant, and was understood, *absolutely*, and without reservation of any special case. She had been made one flesh with her husband, and was for ever forbidden to his brother. There is no instance of any

[8] Levit. xviii. 13.

sanction given to the contrary in Israel under the law of Moses.

5. Although a wife's sister is not expressly *named* among the prohibitions, yet the identity of the principle must be recognized, as soon as the rights and responsibilities of the two sexes were placed on a just footing of equality. While slavery and polygamy existed this might not in all cases be possible. The law of Moses viewed the question from the male side. It requires now to be looked at also from the female side; for "in Christ Jesus there is neither male nor female, neither bond nor free." Equal duties and responsibilities of holiness lie upon us all. Now the successive relation of two sisters to the same man as husband is the same with that of two brothers to the same woman as wife. The *blood-relationship* between the sisters is the same as between the brothers; the bond of the marriage union constitutes the same *affinity* in each case. If there must be a revulsion of the holy moral feelings and duties of a brother, in taking her who had been his brother's wife, equally there must be a revulsion of the holy moral feelings and duties of a sister, in taking the place of her sister in the marriage bed with him who had been her sister's husband. And this, be it observed, is a moral question, not a mere question of physical capabilities. We are told that there are those who never are conscious of adopting the holy affections of brother and sister towards brother and sister in law; and whose moral nature suffers no revulsion in substituting the conjugal for the fraternal relation. But ought the law of God, and the holy circle of the sentiments and affections of home, spreading a hallowed protection around the

freedom of its intercourse, and giving mutual trust and confidence to its several relations, to be violated for the sake of these? This subject has sometimes been treated on grounds unworthy of man's moral nature, as if consanguinity alone were to be regarded, and that because of the physical consequences as affecting the offspring. These are undoubtedly important; but they form the lowest ground, fit to be dealt with principally rather by cattle-breeders than by the fathers and brothers of British Christian society. The cattle-breeder might discover no physical impediment to marriage with a step-daughter or a step-mother; but the law of God denounces such a union as incestuous, though there be affinity only, and not blood relationship, between the parties.

6. The delivery of the law constituted a marked epoch in this question. No argument can be deduced from the latitude of conduct which existed in the patriarchal ages, to prove that it is equally allowable for us. Abraham called his wife his sister, and says that she was the daughter of his father, but not the daughter of his mother. But as the Hebrews apply the name of "father" to *grandfather* as well, and of "daughter" to *granddaughter*, and their language has no other mode of expressing the relation of grandfather and granddaughter, except by a periphrasis which in this case would have been double and inconvenient, it is possible that she was really his cousin half-blood. Josephus so far adopts this view as to make her the sister (perhaps only kinswoman) of Lot, who was his brother Haran's son. And in the Book of Genesis[9] it is remarkable that

[9] Gen. xi. 31.

she is called not the daughter, but only the "*daughter-in-law*" of Terah, Abraham's father. And Lot is called Terah's "son's son," but she is not called his "son's daughter." There is indeed no reason for the adverse opinion, unless the mere wish to criminate Abraham, or to lower to that level the moral code of the patriarchs, is to be accepted as such; for Isaac also applied the name "sister" to his wife, though only a *cousin;* and no doubt the word "sister" was conventionally open to be used and understood with that latitude, just as "Jacob told Rachel that he was her father's brother[1]," without surely the slightest intention to deceive, and without any imputation of using language incorrectly, though he was really her father's nephew; and Laban also uses the same language, saying to Jacob, "Thou art my brother." In like manner Lot is called Abraham's brother[2]: and again, we read in the First Book of Chronicles (ch. xxiii. 21, 22), that "the sons of Malhi" were "Eleazar and Kish. And Eleazar died, and had no sons, but daughters; and their *brothers* (ἀδελφοὶ) the sons of Kish took them[3]." And so also we read of the "brethren" and "sisters" of the Lord Jesus. The imputations therefore cast upon Abraham and upon Isaac have nothing to sustain them. Be this as it may, it is not essential to our present inquiry. Jacob certainly had two sisters

[1] Gen. xxix. 12. 15; xxviii. 2. [2] Gen. xiii. 8; xiv. 14.

[3] This passage, which is not from the oldest book of the Scripture, puts in a proper and natural light a question of the learned Professor Eadie as to the brethren of our Lord, in which he asks, "Again, if the brothers were merely cousins, how could they be called ἀδελφοί?" In saying that the word is not so used in the New Testament the Professor *assumes* the point, and is certainly in error.

palmed upon him, wholly contrary to his own intention, and in violation of his contract; but the fact illustrates the state of moral opinion and practice among his kindred in Padan-Aram. "Before the law," St. Paul argues, "sin was in the world; but sin is not imputed where there is no law." But the delivery of the law constituted a new epoch. The progressive corruption of mankind had reached at Sodom, and in the nations of Canaan, a development revolting even to nature. But if *we* sin against superior light, it shall be more tolerable for Sodom and Gomorrah, or for Tyre and Sidon, in the day of judgment, than for us. It was full time that God should intervene for the regulation of the social life of man, and the correction of its intolerable evils: and though it was not at that time practicable to place things at once on a perfect footing, yet the law was a schoolmaster to lead us to Christ. The law made nothing perfect, but the bringing in of a better hope did.

7. The Christian dispensation advanced yet further towards the recovery of man from the ruins of the fall. Marriage was presented in the holiness of God's original purpose, the union of one man with one woman in holy and inseparable love. Polygamy was first forbidden in the Christian ministry, and gradually extinguished among the Christian people. Christianity advanced to higher and stricter holiness, but it did not relax one jot or one tittle of the moral law.

It has nevertheless been made a question by some, whether the law of the prohibited degrees of kindred and affinity in the Book of Leviticus is binding upon Christians! A question the very

putting of which may be affirmed to show a very deplorable state of moral and spiritual blindness, for any one who professes to believe in revealed religion. What! can those crimes, and that moral turpitude of incest, for which the land "spewed out" the Canaanites, be allowable for Christians? Is that, in their opinion, the glorious liberty with which Christ has made us free? Would they throw back the world three thousand four hundred years? The Lord God of heaven will not hold them guiltless of the attempt which they make towards it. The effect of Christianity upon the question of the prohibited degrees is this, that whereas, under the preparatory and imperfect dispensation of Moses, woman continued depressed, and the question was viewed from the male side, now she has been elevated to her true position, and invested with her rights and responsibilities, so that the question must necessarily be viewed no longer from the male side exclusively, but also from the female. It is not lawful for woman to disregard the ties of blood relationship to her sister, any more than for man to disregard the ties of blood relationship to his brother. The woman has received, together with freedom of will, responsibility for her conduct. She is not disposed of by man irrespectively of her choice, but is protected in her Christian liberty. This elevation of position has brought with it corresponding equality of obligations. And the relation of two sisters in succession to one and the same man as husband, is not different in its moral character from the relation of two brothers to the same woman as wife. Even by the law of Moses, though the question was viewed from the male side,

and the responsibility laid on the man, the principle was not kept back, though this particular relation was not specified, but the WIFE'S NEAR KIN are expressly indicated as forbidden to the man (Levit. xviii. 17); and the tendency and direction of the legislation are manifest in themselves, and are made more clearly manifest in Christ, who supplemented and fulfilled the law, and under whose kingdom male and female are placed on an impartial footing of justice and responsibility. In regard to the omission of the specification of this particular degree of affinity, it should be observed that the law of Moses occasionally lays down principles without enumerating in detail all their special applications. The *principle that the wife's near kin are forbidden* is laid down as furnishing the *reason* why her daughter and granddaughter are forbidden, and nothing whatever is said to exempt the wife's sister from the operation of it. In like manner, when the principle that a man's own near kin are forbidden is laid down, we do not except some cases which are for some reason, as perhaps their very obviousness, passed over and not specified; as, for instance, a man's brother's daughter, his own mother's brother's wife, nay, a man's own daughter. On the strictest interpretation of "near of kin" it has not been denied that it includes not only the direct ascending and descending line, but also laterally brother and sister. The wife's sister is *her nearest of kin laterally*. I am not aware that by any of the disputants it has ever been denied that that relation is within the degrees designated by the phrase *propinquitas carnis*, "the remainder of her flesh," "flesh of her flesh," or "near of kin," in its most restricted legal

sense. Nor could it be denied, seeing it is specially declared, in the case of a "mother's *sister*," that she is "thy mother's *near kinswoman*" (Levit. xviii. 13). It is necessary also to include the wife's sister's daughter among the near kindred of the wife, because the blood of the sister descends in her daughter, and is her own just as much as a man's own blood is recognized in his son's daughter, or his daughter's daughter. Levit. xviii. 10. The Mishna accordingly places the "brother's son" among the forbidden degrees of consanguinity (*Yebamoth* iv. 7, quoted above, p. 28). And the brother's or sister's daughter is in the same degree of consanguinity. The wife's sister's daughter is therefore the wife's near kinswoman, within the strict meaning, and so not permitted to the husband[4].

But it is erroneous to argue, as Dr. McCaul and some others, that to forbid the wife's near kin to

[4] In the ancient Ecclesiastical Canons of the second and third centuries, commonly called Apostolical Canons, probably, as has been thought, collected by Clement of Alexandria, and afterwards, perhaps from confusion of the name, erroneously attributed to Clement of Rome, but which are certainly ante-Nicene, we find the following:—Ὁ δύο ἀδελφὰς ἀγαγόμενος, ἢ ἀδελφιδῆν, οὐ δύναται εἶναι κληρικός. "He who has married two sisters, or the sister's daughter, cannot be admitted to the clerical order."—Cotelerii Patres Apost. vol. i. p. 44. The restriction is the same which St. Paul puts upon polygamy.

As the *niece*, ἀδελφιδῆ, is here mentioned in connexion with the wife's sister, I have thought it fair to indicate that primary connexion in the rendering, though the word means either brother's or sister's daughter. In the collection of the Roman Canon Law these Canons are printed, but the word is there erroneously rendered *consobrina*.—Corp. Jur. Canonici, pars prima, fol. Lugd. 1571, col. 2064. Long after the date of these Apostolical Canons, St. Augustine, bishop of Hippo, tells us that in his days marriage with a

the husband, in consequence of his personally becoming one flesh with his wife, is to establish a similar relationship between the *brothers* of the husband and sisters of the wife in such wise as to forbid the near kindred of his wife not only to the husband, but to his brother also! In the Canons of the Greek Church, indeed, the error seems to have been fallen into of treating the alliance of families which takes place by the marriage of one member of each as if it were an actual fusion of the families. But the fact that the two persons who marry become thereby "one flesh," while it renders the wife a member of the husband's family and the husband reciprocally a member of the wife's, does not incorporate all the members and relations of the families into one another. Only the *two* become one flesh. The affinity with the husband's family is limited to his wife: the affinity with the wife's family is limited to her husband: and in their children it passes into BLOOD-RELATIONSHIP TO BOTH FAMILIES. But the husband's *brother* has no relationship of affinity to the wife's *sister*, unless indeed he marries her, which is fully permitted by the Divine law.

The moral relations, affections, and duties of domestic life are among the holiest of all things under God; and by a public act to declare that to be holy which He hath made unholy, and to sanction the use of His holy Name to bless it, would be such an act of insult to the Throne of Heaven as may provoke the Divine indignation, and bring down judg-

consobrina, or cousin, was not forbidden either by Divine or human law, but was of rare occurrence, and considered inexpedient.—*De Civ. Dei*, xv. 16. 2. This of itself may show the falsity of the rendering in the Roman Canon Law above remarked upon.

ment upon the land. It behoves men, therefore, to deal reverently in matters which affect the holy and righteous revelation of His will; and not to seek by canvassing by paid agency, and wilfulness for private ends, to alter that holy constitution of domestic life which He hath ordained and blessed. The innovation which has been proposed at present is the leaven which, if introduced, will soon leaven the whole lump; and all the relations of holy domestic life must be affected by it. Hitherto we have gone on a clear principle. God has declared a man and his wife to be one flesh; and, being made one flesh, we admit the sister of the one to be received in frank and holy confidence as the sister also of the other. A *blood relationship* on both sides is established to the children of the marriage. But men, and, I blush to say, some women, are seeking to annul the whole principle of Christian morals which is based upon that declaration of God, that "they two shall be one flesh." It has been avowed that the whole law of affinity is struck at. The present aim is but the first instalment. The niece, the brother's wife, come next in order, and have been specified. God only knows what next; but this is manifest, that a MORAL REVOLUTION is threatened which will be felt in every home in England. For it is about to be declared that a man and his wife shall not be one flesh, in such wise that the sister of the one shall be treated and trusted as the sister of the other, any longer; but the whole moral ties of affinity shall be dissolved to give supposed colour of respectability to the irregular lust of a few. There is a dignified effrontery in demanding this, which takes many as it were by storm, and makes them feel as if

the whole morals of English domestic life should be altered to correspond with the irregularities of a few, who put their own wishes and erroneous notions of expediency instead of the light of Scripture. If, as they suppose, affinity does not survive the dissolution of the first marriage bond by death, let it be shown on what principle consistently with this it survives the dissolution of it by divorce. Who, say they, will make so good a step-mother as the wife's own sister? Let them change the point of view to the other side, and the question becomes, Who so good a step-father as the deceased husband's own brother, the very man whom God has expressly forbidden? The affections of the mother's sister, trusted and permitted in the confidence and holy freedom of a sister, are a protection to the children, and afford a resource and provide an advocate, if they should, after their mother's death, suffer oppression from a jealous step-mother. But that collateral protection by this new expediency is to be taken away, and the aunt is herself to be placed in the position of jealousy, as step-mother. This moral result is finely pointed out by St. Basil: "Make not, O man, thy young children's aunt into their step-mother; nor arm against them her, who ought to stand to them in affection instead of their mother, with those implacable jealousies." And in order that this may be done in a few cases for the gratification of an irregular passion, the principle of brotherly and sisterly affection, and confidence between brothers and sisters in law, is to be destroyed in all, and a principle of reserve introduced in each case as great as towards one with whom there was no affinity. The children in short, after

their mother's death, must generally be deprived of the kindly influence and protection of their mother's sisters as aunts[5]. Nay, will this not necessarily affect the position of the wife's sister even during the wife's lifetime? Will no principle of danger and of jealousy be introduced when the sister is to be regarded as an eventual aspirant to the husband's conjugal affections, one who may yet put on her dead sister's wedding-dress, and celebrate her marriage feast over her grave, and mount the marriage bed which has been cleared of her cold remains? Is there no revulsion of sisterly feelings and holy affections involved in this? Hitherto the affections, the associations, and the holy influences of home, have been strong in England. The Lord God of heaven avert from us the time when the opening of new ideas and new channels of desire may break up mutual confidence, awaken mutual jealousies, and render a man's foes those of his own household; or when the interested sorrow which has watched over a sick and expiring sister shall be followed, when the breath is out, by the emotion which throws the arms around the widower's neck! Far from the

[5] These consequences are stated to have practically followed in Germany. "I have heard Germans lament it very much," says a distinguished divine. "They have told me that all domestic relations are in consequence broken up. Uncles marry their nieces, and brothers-in-law marry their sisters-in-law. The domestic relation being thus contracted, the orphan niece and the deceased wife's sister no longer find a home where so many do among us, where the law is against such unions. Such instances abroad will not, if we inquire into their moral effect upon society or religion, commend the like to us. I am told that the state of marriage in Germany is very frightful. I asked a German doctor of philosophy lately as to the state of marriage, and he said, 'It makes a German cover his face with his hands for shame.'"

variable region of earthly politics, we have access to a Throne more august, a Lawgiver who changes not with the caprices of human desire, and the principles of whose legislation cannot be made subservient to the agitation of interested men, or to the hirelings of the wealthy and the proud, who with a gratuitous hypocrisy profess themselves to be urging the matter solely with a view to the moral improvement of the poor [6].

I leave their real motives to their own consciences. But the effect of the change for which they are agitating would be to put the law of England grossly at variance with the moral principles of the revealed Word of God.

[6] See as to this an admirable speech of Vice-Chancellor Sir W. Page Wood (now Lord Chancellor Hatherley), on February 1, 1860, which is published in the form of a tract by the Marriage Law Defence Association, No. 10 of their Series, pp. 16, 17.

THE END.

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